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5 **UNITED STATES DISTRICT COURT**  
6 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
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8 In Re DYNAMIC RANDOM ACCESS  
9 MEMORY (DRAM) ANTITRUST  
10 LITIGATION

Case No: M-02-1486-PJH

**ORDER RE AUTHENTICITY OF  
DOCUMENTS AND BUSINESS  
RECORDS**

11 This Document Relates to:

12 ALL ACTIONS  
13  
14

15 By joint letter dated August 7, 2006, Direct Purchaser Class Plaintiffs, Indirect  
16 Purchaser Plaintiffs and Defendants brought to the Court's attention a dispute concerning  
17 the procedure to be used to establish the authenticity of documents, and their qualification  
18 as business records under Federal Rule of Evidence 803, that may be used for dispositive  
19 motions and at trial.<sup>1/</sup>

20 This matter came on for hearing before the Honorable Joseph C. Spero, United  
21 States Magistrate Judge, on August 30, 2006. Bruce L. Simon, Guido Saveri and Cadio  
22 Zirpoli appeared for Direct Purchaser Class Plaintiffs; Josef D. Cooper appeared for the  
23 Indirect Purchaser Plaintiffs. Steven H. Bergman appeared on behalf of Settled  
24 Defendant Hynix, and Julian Brew appeared on behalf of Settled Defendant Infineon.  
25 Hynix, Infineon and Samsung are collectively "Settled Defendants". Jon Swartz, Howard  
26 Mark Ullman, Joel S. Sanders, Mark E. Weber, Steven H. Morrisett, Andrea P. DeShazo,

27  
28 <sup>1</sup> This Order does not apply to the individual actions or actions brought by the Attorney  
Generals who are excluded from the term "Direct Purchaser Class Plaintiffs" as used  
herein.

1 Harrison J. Frahn, and Paul Griffin appeared for Defendants.

2 Having reviewed the papers on file and the oral arguments of all interested  
3 counsel, the Court rules as follows:

4 1. Direct Purchaser Class Plaintiffs may proffer to Defendants up to 10,000  
5 documents for stipulation regarding authenticity and business record qualification. Direct  
6 Purchaser Class Plaintiffs must produce bate-stamped copies of all proffered documents  
7 to each Defendant by Friday, September 8, 2006. To the extent a document was  
8 originally produced in electronic format, it must be provided electronically; CD is  
9 preferable. If a document was produced in hard copy only, it may be provided by hard  
10 copy.

11 2. The Defendants may proffer to Direct Purchaser Class Plaintiffs up to  
12 10,000 documents for stipulation regarding authenticity and business record qualification.  
13 Defendants must provide bate-stamped copies of all proffered documents either  
14 electronically or in hard copy by Friday, September 15, 2006, subject to the same  
15 conditions expressed in paragraph 1. This is a cumulative number. The Defendants may  
16 allocate their respective shares of that 10,000 documents as they choose.

17 3. By Monday, September 18, 2006, Defendants must identify which, if any,  
18 of the Direct Purchaser Class Plaintiffs' proffered documents they are unwilling to  
19 stipulate with respect to authenticity and/or business records qualification. The parties  
20 must engage in a good faith meet-and-confer attempt by Friday, September 22, 2006. If  
21 the parties are unable to resolve the dispute informally, Direct Purchaser Class Plaintiffs  
22 will be entitled to take custodian-of-record depositions of Defendants for whom there is  
23 no agreement, Settling Defendants and Third Parties between September 25, 2006 and  
24 October 6, 2006 on shortened notice to accommodate this schedule. A response is  
25 required from each Defendant to all documents proffered by Direct Purchaser Class  
26 Plaintiffs, regardless of who produced the documents.

27 4. By Monday, September 25, 2006, Plaintiffs must identify which, if any, of  
28 the Defendants' proffered documents they are unwilling to stipulate with respect to

1 authenticity and/or business records qualification. The parties must engage in a good  
 2 faith meet-and confer attempt by Friday, September 29, 2006. If the parties are unable to  
 3 resolve the dispute informally, Defendants will be entitled to take custodian-of-record  
 4 depositions of other Defendants for whom there is no agreement, Settling Defendants and  
 5 Third Parties between October 2, 2006 and October 6, 2006 on shortened notice to  
 6 accommodate this schedule.

7 5. With respect to transactional documents, the parties are ordered to further  
 8 meet-and-confer. The parties shall submit a joint letter brief to the Court by September  
 9 15, 2006 if they have not been able to reach a stipulation by that date.

10 6. With respect to settled Defendants Infineon, Samsung and Hynix, they will  
 11 notify all counsel of their waiver of all objections to authentication or qualification as  
 12 business records to both Direct Purchaser Class Plaintiffs' and Defendants' proffered  
 13 documents for use in dispositive motions by the Direct Purchaser Class Plaintiffs, or at  
 14 trial, only in the Direct Purchaser Case. Any such waiver shall apply to the Direct  
 15 Purchaser Class Plaintiffs and Defendants in the Direct Purchaser case, but will not apply  
 16 to any other case. Absent written confirmation of this unconditional waiver, said Settling  
 17 Defendants must participate in the procedures ordered hereby.

18 IT IS SO ORDERED.

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21 APPROVED AS TO FORM:

22 THELEN REID & PRIEST LLP

23 By Paul R. Griffin  
 24 Paul R. Griffin  
 25 For All Defendants Except Samsung

26 COOPER & KIRKHAM

27 By Josef D. Cooper  
 28 Josef D. Cooper  
 For All Indirect Purchaser Plaintiffs

COTCHETT, PITRE, SIMON &  
 McCARTHY

By Bruce L. Simon  
 Bruce L. Simon  
 For All Direct Purchaser Class  
 Plaintiffs